

UNITED STATES MISSION TO THE UNITED NATIONS
NEW YORK

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The United States Mission to the United Nations presents its compliments to the United Nations and has the honor to refer to the Secretariat's note LA/COD/58 of 23 December 2009, soliciting information with respect to draft articles on the law of transboundary aquifers that were developed by the International Law Commission and noted in General Assembly resolution 63/124. The Government of the United States hereby presents its comments.

The United States Mission avails itself of this opportunity to renew to the United Nations the assurances of its highest consideration.

Enclosure

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DIPLOMATIC NOTE

UNITED STATES COMMENTS ON THE
DRAFT ARTICLES ON THE LAW OF TRANSBOUNDARY AQUIFERS

The United States continues to believe that the Commission's work on transboundary aquifers has constituted an important advance in providing a possible framework for the reasonable use and protection of underground aquifers, which are playing an increasingly important role as water sources for human populations. For all States, and especially those struggling to cope with pressures on transboundary aquifers, the Commission's efforts to develop a set of flexible tools for using and protecting these aquifers has been a very useful contribution.

Nevertheless, there is still much to learn about transboundary aquifers in general, and specific aquifer conditions and state practices vary widely. The draft articles that the General Assembly took note of in resolution 63/124, moreover, go beyond current law and practice. For these reasons, United States continues to believe that context-specific arrangements provide the best way to address pressures on transboundary groundwaters, as opposed to a global framework treaty. As decided in resolution 63/124, States concerned should take into account the provisions of these draft articles when negotiating appropriate bilateral or regional arrangements for the proper management of transboundary aquifers. Numerous factors might appropriately be taken into account in any specific negotiation, such as hydrological characteristics of the aquifer at issue; present uses and expectations regarding future uses; climate conditions

and expectations; and economic, social and cultural considerations. Maintaining the articles in their present, draft form is suitable for these purposes.

If the draft articles were fashioned into a global treaty, we remain unconvinced that it would garner sufficient support. We recognize, however, that many States have expressed an interest in such a framework convention. If the draft articles were to take the form of a treaty, there are a number of important issues that we believe would need to be addressed. For example, appropriate final articles for a convention would need to be developed, as well as articles that establish the relationship between the proposed convention and other bilateral or regional arrangements. In particular, care would need to be taken not to supersede existing bilateral or regional arrangements or to limit the flexibility of States entering into such arrangements.